IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY AND ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.743 OF 2002
IN
SUIT NO.4913 OF 2000

Najid A.Oomerbhoy and Ors. .. Plaintiffs

Vs.

Rashid S.Oomerbhoy and Ors. .. Defendants

Mr.Sanjay Jain i/b Thakar Jariwala and Associates for the plaintiffs

CORAM : S.U.KAMDAR, J

DATED : 18TH AUGUST, 2005

P.C.:

1. By the present motion the applicants are seeking that this court should direct the Court Receiver to fix the royalty/compensation in respect of the flat situated at Benhur, 32, Narayan Dabholkar Road, Mumbai 400 026 for a period of 6.12.00 to 11.5.01 and that Royalty be directed to be paid by the plaintiffs to the Court Receiver.

2. It is an admitted position that though the Court Receiver was appointed on 6.12.00, he took possession of the premises only on 11.5.01 and on

11.5.01 as and when the Receiver took possession, plaintiffs handed over the possession and did not get himself appointed as an agent of the Receiver. The question of payment of royalty arises only when the person is appointed as an agent of the Court Receiver. The learned counsel for the defendant no.1 however relies upon the order passed by this court being dt.2.8.01 particularly para 4 thereof in which the court has stated that after the Receiver takes possession defendant no.1 should be appointed as an agent on usual terms and conditions.

3. It is not in dispute that defendant no.1 was never appointed as agent of the Court Receiver and thus, the present Notice of Motion is most frivolous and total abuse of process of court. In an event if the defendant no.1 is seeking claim of wrongful occupation and possession of the property then such order can be passed at the final hearing of the suit by way of decre for means profit. Motion thus dismissed. Defendant no.1 to pay the cost of the motion quantified at Rs.7,500/- to the Maharashta Legal Aid Services Authority.